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The Status of Women in the Iranian Constitution

By Gholamreza ZakerSalehi¹

Abstract

The purpose of this article is to explain the status of women in the Iranian Constitution. The methods of the study are legal analysis along with a systemic and holistic approach. The findings indicate that the status and the rights of women have been unequivocally articulated in the Iranian Constitution in Articles 10 and 21 and the responsibilities for the government have been assumed in this regard. Regarding the basic rights like the right for education, the right for dwelling and the right for employment and so on, women have been included by using the general terms such as “everyone”. However, there are some ambiguities concerning the issue of women’s political participation. There is a serious ambiguity with reference to the qualifications required for the presidency. According to Article 115, the president of the Republic must be elected from among the religious and political elite. The word used in the Persian text for the “political elite” is the Arabic word “*Rajol*” which literally means “men” in Persian. However, according to some interpretations the word *Rajol* has been used as an umbrella term to refer to “political figures”. These two interpretations have been the source of arguments regarding the rights of women to return and appoint for the presidency. Although some Iranian jurists emphasize the second interpretation and their reasons have been mentioned in this article, the failure of the Guardian Council of the Constitution to adopt a clear and straightforward stance concerning this issue has denied women of their rights for the presidential nomination. In addition to the practical interpretations presented by the Iranian jurists, the author believes that the confusion can be solved by resorting to the rule Taghlib. It seems that part of the problem lies in the practical interpretation of the terms, which has resulted in the confusion and has been the source of discrimination between Iranian men and women. Another finding of this study is that although the Iranian Constitution reflects most of the ideals of liberal Constitutional law, it adjusts more to the institutional Constitutional law. For example, in the section of women's rights, the emphasis is on the family as a unit and not just on the individual woman as an autonomous human with different personal freedoms.

Keywords: Iranian Constitution, Women's Rights, Political Participation, Elimination of Discrimination, Legal analysis

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Introduction and Statement of the Problem

The Iranian Constitutional Revolution (1905) which led to the establishment of a parliament in Iran during the Qajar dynasty has had some positive outcomes such as discourse on the rule of law, separation of powers, expansion of democracy experience rather than autocracy, establishment of the national and civil institutions, judicial and educational reforms, equality of all people before the law, etc. (Molaeii Tavani, 2015). The first Constitution was written in 1906 along with the Constitutionalism Movement. The Movement opened the way for cataclysmic change in Iran, heralding the modern era. It saw a period of unprecedented debate in a burgeoning press. The Movement created new opportunities and opened up seemingly boundless possibilities for Iran's future. Many different groups fought to shape the course of the Movement, and all sections of society were ultimately to be in some way changed by it. The old order, which King Nassereddin Shah Qajar had struggled for so long to sustain, finally died, to be replaced by new institutions, new forms of expression, and a new social and political order.

The draft of the Constitution which was inspired by the French Constitution, included 51 principles and was compiled by the then prime minister and a few statesmen who were partial to limitless authority and dominance of the king, and a number of representatives of the first consultative assembly who advocated the national government and the rights of the people, and some of the Constitution translators of other countries, and then was signed by Muzaffar al-Din Shah.

Although the compilers of the Constitution aimed to draft a comprehensive and useful one to the nation; however, the Constitution was not free of defects. Some parties believed that bounding to the religious requirements, stiff resistance from authoritarians and absolutists, opposition of the majority of the people in accepting the rule of law, politics and the influence of colonialism and offers of the secret associations, were of the obstacles in compilation of a comprehensive Constitution. However, the Constitution was approved in 1906 and its supplementary including 107 Articles was approved in 1907, but later some amendments were applied to it. The Constitution did not include any Article on women's representation in the Senate, National Assembly and the political missions, and acknowledged reign as the right of men.

Immediately after the collapse of the Imperial Regime and establishment of the Islamic Republic of Iran, the founder of the revolution, political elites and the people felt it was necessary to have a Constitution appropriate to the cultural, social, political and economic institutions in the society and protective of the Islamic values, and the rule of law and attainment of independence in various fields and protective of the rights of all people in all social classes. This Constitution includes some specific sections pertinent to the women's rights and some parts on the fundamental rights of all people (in general, both men and women).

This Article aims to show the status of women in the Constitution of the Islamic Republic of Iran. Does the Constitution consider men and women two independent beings enjoying a common human identity and equal rights, duties and social and family origins? Or, does it consider men more noble than women? How does the Constitution deal with the different aspects of women's rights?

Legal analysis is the main method used in this paper, along with interpretation. The principal emphasis is on textual analysis. The main text is the Iranian Constitution. The approach adopted by the researcher is holistic and systematic. Therefore, this text along with all its connections have been considered. Philology has been utilized in some cases in this analysis. On the whole, this text is analyzed from the viewpoint of women's rights.

Literature review

The Constitutional movement played an important role in awakening Iranian women and rejuvenating their social life so that the following distinctions can be clearly distinguished between the pre- and post-Constitutional era:

Table 1: Comparison of the characteristics of the women's movement in two historical periods in Iran

<i>After Constitutional movement</i>	<i>Prior to Constitutional movement</i>
<i>1. The demands for modern lifestyles similar to those of European countries were predominant among some of the women living in large cities.</i>	<i>1. The women's movement was not a public movement.</i>
<i>2. In addition to the protest, the women's movement transformed into a social and legal reform.</i>	<i>2. Following the Treaty of Turkmenchay, Golestan and Paris, a sense of patriotism and national identity was raised in women.</i>
<i>3. The women's movement in 1910, twenty years after the publication of the first women's magazine in Europe, published a magazine (Danesh Magazine)</i>	<i>3. In the case of Griboyedov, the Bread Movement or the process of establishing the National Bank, the struggle of women was anti-oppression and had no feminist nature.</i>
<i>4. In addition to modernity, feminist demands also emerged.</i>	<i>4. Women did not have their own written media (newspapers), but the general newspapers belonging to the intellectual movement such as Kaghaze Akhbar were published in 1837.</i>
<i>5. Independent women's associations were formed in large cities and the activities became overt.</i>	<i>5. The establishment of modern girls' schools at the time of Nasir-al-Din Shah and sending women to the European universities for education were effective in the advent of women's demands.</i>
<i>6. The movement for constructing schools for girls is one of the legacies of this era.</i>	<i>6. A very small group of women (mostly from aristocracy) had cultural and social demands.</i>
<i>7. In Reza Shah era, women's associations were gradually dissolved and state-owned organizations such as the Women's Association replaced them.</i>	<i>7. The state and the larger body of traditional and religious society resisted these demands.</i>
<i>8. After the Islamic Revolution of 1979, the women's movement (in the hidden layers of society) has continued with greater strength and order and newer demands, such as freedom to adopt or drop Islamic dress code, have been added to previous demands.</i>	<i>8. Activities were mostly secret.</i>
<i>9. In this period, the women's movement has not had a completely inclusive aspect</i>	<i>9. Activities had a nationalist orientation.</i>

either and does not represent all segments of Iranian women.	
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Ref: Bamdad, B. (1969)

The core of women's rights discussions among the Iranian and Arab scholars is inequality. Such discussions are long and beyond the scope of this article. The following are just some examples.

Motahhari (1978) does not distinguish between men and women in existential terms. But, according to their nature, he argues, women and men have different physical and mental structures. Because of this, the difference between them is just as justice.

Mernissi (2002) does not recognize a fundamental difference between men and women. In order to prove the acceptance of this principle by Islam, she draws from historical sociology to determine the social status of a Muslim woman at the onset of Islam. In order to make her point, she distinguishes between original and historical Islam. The former considers equal rights for men and women while the latter violates such equality. One crucial, unequivocal verse in the Qur'an lays the ground for the concept of equality between men and women: "*The believers, men and women, are allies (awliya) of one another.*"

According to Asma (2019), the term *awliya* in this verse means alliance, mutual assistance and mutual reinforcement. This does not mean the superiority or the excellence of men over women.

All Muslim scholars are of the opinion that the Qur'an, when using the general term *al mu'minun*— the believers, is most often addressing both men and women, and that these exhortations concern women just as much as men. The Qur'an is unambiguous, and stresses emphatically this close *cooperation* or *wilayah* between men and women in socio-political action, before generalizing it to acts of religious ritual. Incidentally, some contemporary commentators harken back to this original meaning and confirm the prescription of joint socio-political participation by both men and women, as unequivocally advocated in the Qur'an.

Dr. Sayed Muhammed Hussein Fadlollah (1935-2010), the Lebanese scholar, in his interpretation of this verse speaks: "...of a 'coalition' between men and women in 'faith', a '*wilayat iman*'." He also states,

that this verse reaffirms the egalitarian vision of the Qur'an, which encourages women to be involved in all areas of social and political life, in contrast to the traditional exclusivist understanding that tends to reduce women to their function as wives and mothers, a role that, while important, cannot constitute their unique horizon in life". (Asma Lamrabet, 2019)

The Oxford Encyclopedia of Islam opens another window regarding the participation of women in social activities at the onset of Islam. In this way, traditional interpretations of Islam are incompatible with the true nature of Islam. We read in this article that the historical record shows that Muhammad consulted women and weighed their opinions seriously. At least one woman, Umm Waraqah, was appointed imam over her household by Muhammad. Women contributed significantly to the canonization of the *Quran*. A woman is known to have corrected the authoritative ruling of Caliph Umar on dowry. Women prayed in mosques unsegregated from men, were involved in hadith transmission, gave sanctuary to men, engaged in commercial transactions, were encouraged to seek knowledge, and were both instructors and pupils in the early Islamic

period. Muhammad's last wife, Aishah, was a well-known authority in medicine, history, and rhetoric. The *Quran* refers to women who pledged an oath of allegiance to Muhammad independently of their male kin. Some distinguished women converted to Islam prior to their husbands, a demonstration of Islam's recognition of their capacity for independent action. Caliph Umar appointed women to serve as officials in the market of Medina. Biographies of distinguished women, especially in Muhammad's household, show that women behaved relatively autonomously in early Islam. In Sufi circles, women were recognized as teachers, adherents, “spiritual mothers,” and even inheritors of the spiritual secrets of their fathers. No woman held religious titles in Islam, but many women held political power, some jointly with their husbands, others independently) Oxford Islamic studies, 2019.)

Xaviera Medina (2014) discusses amicable and human rights compatible interpretations of Islam. In fact, everything depends on interpretation. He writes:

In the past few years, there has been increasing debate on women’s legal rights in Islam, especially in areas such as inheritance, marriage and divorce, as well as laws about the position of women in court procedures. These changes indicate that it may be possible for Muslim doctrine to be reconciled with an interpretation arguing against women’s discrimination.(Xaviera, Medina, 2014)

He contends that a major part of problems is due to inappropriate interpretations of religious texts. He believes:

Muslim feminist women are fighting fundamentalist interpretations and changing cultural paradigms that force them to choose between religion and their rights. What’s important about these efforts is that Muslim female activists tend to apply concepts such as justice, equality and democracy not only in the public sphere, but also in the family, culture and religion. (Xaviera, Medina, 2014)

Now let’s take a look at the status of women in the Constitution of some Arab Muslim countries:

Table 2: Women's rights in the Constitution of some Muslim countries

<i>Content</i>	<i>Article</i>	<i>Country</i>
<i>(1) The family is the basic unit of society and is protected by the state.</i>	<i>44</i>	<i>Syria</i>
<i>(2) The state protects and encourages marriage and eliminates the material and social obstacles hindering it. The state protects mothers and infants and extends care to adolescents and youths and provides them with the suitable circumstances to develop their faculties.</i>		
<i>The state guarantees women all opportunities enabling them to fully and effectively participate in the political, social, cultural, and economic life. The state removes the restrictions that prevent women's development and participation in building the socialist Arab society.</i>	<i>45</i>	

<i>All Lebanese are equal before the law. They equally enjoy civil and political rights and equally are bound by public obligations and duties without any distinction.</i>	7	Lebanon
<i>Justice, Liberty, and Equality are the pillars of society; co-operation and mutual help are the firmest bonds between citizens.</i>	7	Kuwait
<i>The family is the cornerstone of Society. It is founded on religion, morality, and patriotism. Law shall preserve the integrity of the family, strengthen its ties, and protect under its support motherhood and childhood.</i>	9	
<i>All Iraqis are equal in their rights without regard to gender, sex, opinion, belief, nationality, religion, or origin, and they are equal before the law. Discrimination against an Iraqi citizen on the basis of his gender, nationality, religion, or origin is prohibited. Everyone has the right to life, liberty, and the security of his person. No one may be deprived of his life or liberty, except in accordance with legal procedures. All are equal before the courts.</i>	12	Iraq
<p><i>Article (8) Society is based on social solidarity. The State shall achieve social justice and provide the means to achieve social interdependence, in order to ensure a decent life for all citizens, as regulated by Law.</i></p> <p><i>Article (9) The State shall ensure equal opportunities for all citizens without discrimination.</i></p> <p><i>Article (10) The family is the nucleus of society, and is founded on religion, morality, and patriotism. The State shall ensure its cohesion, stability and the establishment of its values.</i></p> <p><i>Article (11) The State shall ensure the achievement of equality between women and men in all civil, political, economic, social, and cultural rights in accordance with the provisions of this Constitution.</i></p> <p><i>The State shall take the necessary measures to ensure the appropriate representation of women in the houses of representatives, as specified by Law. The State shall also guarantee women's right of holding public and senior management offices in the State and their appointment in judicial bodies and authorities without discrimination.</i></p> <p><i>The State shall protect women against all forms of violence and ensure enabling women to strike a balance between family duties and work requirements.</i></p> <p><i>The State shall provide care to and protection of motherhood and childhood, female heads of families, and elderly and neediest women.</i></p>	8	Egypt
	9	
	10	
	11	
<i>The man and the woman enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character, enounced in this Title and in the other provisions of the Constitution.</i>		Morocco

<p><i>Article 21 Marriage and family constitute the natural and moral base of the human community. They are placed under the protection of the State.</i></p> <p><i>The State and public collectivities have the duty to see to the physical, mental and moral health of the family, particularly of the mother and of the child.</i></p> <p><i>Pakistan Islamic Republic</i></p> <p><i>Article 26</i></p> <p><i>(1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.</i></p> <p><i>(2) Nothing in Clause (1) shall prevent the state from making any special provision for women and children.</i></p>		<i>Niger</i>
<p><i>All citizens are equal before the law. No discrimination shall prevail because of birth, race, sex, opinion or any other personal or social condition or circumstance.</i></p>		<i>Algeria</i>
<p><i>(1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.</i></p> <p><i>(2) Nothing in Clause (1) shall prevent the state from making any special provision for women and children.</i></p>	26	<i>Pakistan Islamic republic</i>

As you can see in the table, the issues regarding women in these laws are general and brief and vague in some cases. For example, in the case of Iraq, Ms. Meshkat Momen (2008) recognizes three major obstacles in the Iraqi Constitution regarding women rights: The First Obstacle, Vagueness; the Second Obstacle, Discrimination and the Third Obstacle, Promoting Sectarianism. She writes about “vagueness” as the First Obstacle:”

The Iraqi Constitution contains a number of articles that relate to women’s rights. The preamble states: “We the people of Iraq ... are determined ... to ... pay attention to women and their rights.”² However, the phrase “pay attention to” does not obligate the government to advance and guarantee women’s rights. Rather, demarcation of the government’s responsibilities toward women in a non-compulsory way gives the government an excuse to say that it “paid attention” to women’s rights, even though the rate of illiteracy among women increased from 23% in 2000 to 65% in 2004.³

The Constitution states that “Iraqis are equal before the law without discrimination because of sex, ethnicity, nationality, origin, color, religion, sect, belief, opinion or social or economic status;”⁴ yet, providing equality is not enough. Indeed, the illiteracy rate among women suggests marked inequality between women and men at the educational level, rendering women, who have not had an “equal” opportunity to become educated, less qualified for the same jobs. “Positive”

discrimination, long demanded by the women's movement, would enable women to compete with men, even if they were less qualified. While the Equality Clause may work perfectly well in stabilized countries, in post-conflict countries, such as Iraq, positive discrimination is needed to give women an initial push towards advancement.

The Constitution guarantees women the right to run for office and vote. However, the quota of 25% for women's representation in all decision-making bodies, provided for in the interim Constitution, was moved from the Chapter on Duties and Rights to the Chapter on Transitional Laws, implying that the quota could easily be removed in the future.

Findings

What follows focuses on the standing of the women in Iran's Constitution.

i. *The General View towards Women in the IRI Constitution*

In the preamble of the IRI Constitution, it is mentioned that: "Through creation of Islamic social infrastructures, all the elements of humanity that served the multifaceted foreign exploitation shall regain their true identity and human rights. As a part of this process, it is only natural that women should benefit from a particularly large augmentation of their rights, because of the greater oppression that they suffered under the old regime.

The introduction continues by stating that the family is the fundamental unit of society and the main center for the growth and edification of human being. Compatibility with respect to belief and ideal, which provides the primary basis for man's development and growth, is the main consideration in the establishment of a family. It is the duty of the Islamic government to provide the necessary facilities for the attainment of this goal. This view of the family unit delivers woman from being regarded as an object or instrument in the service of promoting consumerism and exploitation. Not only does woman recover thereby her momentous and precious function of motherhood, rearing of ideologically committed human beings, she also assumes a pioneering social role and becomes the fellow struggler of man in all vital areas of life. Given the weighty responsibilities that woman thus assumes, she is accorded in Islam great value and nobility.

The Tone and tenor of this writing refers back to a few months after the victory of the Islamic Revolution over the imperial regime. It is asserted in this statement that the status and role of women was distorted in the past. In other words, the rights of women have been neglected. Naturally, the existence of many cases of positive discrimination on women is the practical outcome of such a view in the Constitution. As we shall see, this special support is limited to the female heads of households, widows, pregnant and the elderly women only.

ii. *The Principle of Non-Discrimination*

In accordance with the 9th paragraph of the 3rd Article of the Constitution, the Iranian government is obliged to abolish all forms of undesirable discrimination and to provide equitable opportunities for all, in both the material and the intellectual spheres.

Article 19 holds that: All Iranians, whatever the ethnic group or tribe to which they belong, enjoy equal rights; color, race, language, and the like, do not bestow any privilege.

And the Article 20, articulates that: "All Iranians, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria". The words used in these Articles such as "all" and "Iranian

people" and "all people of the nation" are general and include both men and women and are used together in order to put more emphasis on men and women. In the Article 30, which deals with free education up to the end of high school for all Iranians, both women and men are mentioned alongside each other for more emphasis.

However, there are some laws that are inconsistent with the context of these Articles, especially on women's inheritance and blood money and giving testimony. These cases have roots in religious jurisprudence teachings. Undoubtedly, there are a lot of disagreements between the jurisprudents in these fields of which some have been solved through dialogues between lawyers and jurisprudents in recent years. An example in this case is the women inheritance when the inheritance is real property. Besides, impediments for women working as a judge have been somehow removed.

iii. Women and the Family

In the context of the Constitution, more emphasis has been put on family compared with woman as an individual. In the view of the Iranian lawmakers, family is a sacred unit and everyone should strive to strengthen its foundation. As it is stressed in the Article 10 of the Constitution: Since the family is the fundamental unit of Islamic society, all laws, regulations, and pertinent programs must tend to facilitate the formation of a family, and to safeguard its sanctity and the stability of family relations on the basis of the law and the ethics of Islam. In the Article 1104 of the Civil Law, an Arabic phrase (*tashyid*) which means "strengthening the foundations of the family" has been used. *Tashyid* means to construct a strong, tall and glorious building. Family should also have glory, grandeur and strength. For this purpose, in the civil law, couples are obligated to have good relationships.

In accordance with the Article 21, the government must ensure the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following goals:

- 1) Create a favorable environment for the growth of woman's personality and the restoration of her rights, both the material and intellectual;
- 2) The protection of mothers, particularly during pregnancy and child-rearing, and the protection of children without guardians;
- 3) Establishing competent courts to protect and preserve the family;
- 4) The provision of special insurance for widows, aged women, and women without support;
- 5) The awarding of guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian.

iv. Civil, Political and Economic Freedoms and Rights

There are numerous types of freedoms associated with safeguarding the individual and the human characteristics, or social and political freedoms. The third chapter of the Constitution is assigned to the "Rights of the People". Besides, there are several rights on welfare and the government is obliged and committed to utilize all available resources in order to give and protect all those rights. There is no difference between women and men in this case, and there is no pertinent separation in the Constitution. Some of the Articles are as follows:

Article 22 holds that: The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law.

Besides, Article 33 stresses that: No one can be banished from his place of residence, prevented from residing in the place of his choice, or compelled to reside in a given locality, except in cases provided by law.

Article 34 holds that: It is the indisputable right of every citizen to seek justice by recourse to competent courts. All citizens have right of access to such courts, and no one can be barred from courts to which he has a legal right of recourse.

Here, statements such as "no one" and "every citizen", are general and can be invoked in emphasizing the rights of women.

On the right to work, Article 28 holds that: Everyone has the right to choose any occupation one wishes if it is not contrary to Islam and the public interests and does not infringe the rights of others. The government has the duty, with due consideration of the need of society for different kinds of work, to provide every citizen with the opportunity to work, and to create equal conditions for obtaining it.

One part of the Article 43 (Economy and Financial Affairs) provides for the right to choose occupation and career on both women and men. This Article holds that:

Article 43: The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation, and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria:

1. The provision of basic necessities for all citizens: housing, food, clothing, hygiene, medical treatment, education, and the necessary facilities for the establishment of a family;
2. Ensuring conditions and opportunities of employment for everyone, with a view to attaining full employment; placing the means of work at the disposal of everyone who is able to work but lacks the means, in the form of cooperatives, through granting interest-free loans or recourse to any other legitimate means that neither results in the concentration or circulation of wealth in the hands of a few individuals or groups, nor turns the government into a major absolute employer. These steps must be taken with due regard for the requirements governing the general economic planning of the country at each stage of its growth;
3. The plan for the national economy must be structured in such a manner that the form, content, and hours of work of every individual will allow him sufficient leisure and energy to engage, beyond his professional endeavor, in intellectual, political, and social activities leading to all round development of his self, to take active part in leading the affairs of the country, improve his skills, and to make full use of his creativity;
4. Respect for the right to choose freely an occupation; refraining from compelling anyone to engage in a particular job; and preventing the exploitation of another's labor.

These statements are general and include both women and men. The limits which are considered for employment in the common laws, are related to jobs which are contrary to Islam and the public interests and the rights of others, such as purchase and sale of gun and ammunition and drugs and alcoholic liquors. The right to work and freedom for all is included in Article 23 of the Universal Declaration of Human Rights and paragraph (a) of Article 6 of the International Covenant on Economic Rights (1966) and Article 13 of the Declaration of Human Rights in Islam. Moreover, Article 11 of the Convention on the Elimination of Discrimination against Women obliges governments to eliminate discrimination against women in the field of employment.

But with regard to welfare rights, Article 29 holds that: To benefit from social security with respect to retirement, unemployment, old age, disability, absence of a guardian, and benefits relating to being stranded, accidents, health services, and medical care and treatment, provided through insurance or other means, is accepted as a universal right.

Besides, the right to education is stipulated in two sections. Today, Iranian women include more than 50 percent of students admitted to universities through enjoying this right.

Based on the Article 30: The government must provide all citizens with free education up to secondary school and must expand free higher education to the extent required by the country for attaining self-sufficiency.

Besides, in the third paragraph of the Article 3, it is asserted that: free education and physical training for everyone at all levels, and the facilitation and expansion of higher education.

Article 31 is assigned to Housing. This Article holds that: It is the right of every Iranian individual and family to possess housing commensurate with his needs. The government must make land available for the implementation of this Article, according priority to those whose need is greatest, in particular the rural population and the workers.

The main point here is that these Articles include the first and the second generation of the Human Rights. At the time of drafting the Constitution, the third generation of Human Rights was not fully acknowledged in Iran. Therefore, except the Article of the right to a healthy environment, no Article of the third generation of the human rights was taken into consideration.

v. The Right of Political Participation of Women

Because this right has been a matter of debate in Iran, it is considered separately and in more details in this section.

The right of political participation is the translation of the right to self-determination in the country's public administration, and the rights to elect and be elected are of its two criteria. Article seven of the Convention on the Elimination of All Forms of Discrimination against Women, obliges Member States to establish equality in both political and public life at the national level through giving women the right to vote and eligibility for election in all organs and all elections.

Two paragraphs are assigned to this subject in the third Article:

Paragraph 7: Ensuring political and social freedoms within the framework of the law;

Paragraph 8: The participation of the entire people in determining their political, economic, social, and cultural destiny.

The expression of "the entire people", implies clearly the right to political participation for both women and men.

An important change which has occurred in the social life of Iranian women and is linked to the Iranian Revolution is that the presence of women in the society is recognized legitimate as it was so before the revolution. Consequently, there is no religious impediment to demand for examples of presence, i.e., other political rights (Kar, 2001,82).

This women's rights activist believes that masculinity is not listed in the conditions and attributes of leadership. Having conditions such as scientific competence, justice and piety, true insight and measure, and so on, is not exclusive to men. Thus, the Constitution does not seek

gender segregation in leadership. Qualified women, just like qualified men, are able to compete in this area and claim their rights (Kar, M, 2001,91).

Assuming the presidency is based on election. Election is the same as delegation of power for which Sharia decrees do not stipulate the condition of masculinity. On the other hand, the presidency is a new issue arisen in the Shia religious culture after the Islamic Revolution, without any decrees issued beforehand. Therefore, there is no religious impediment to the presidency of the women. Making a revision to the Constitution in terms of eliminating the word "*rejal*" also seems possible (Kar, 2001,92).

There is no limit in the Constitution and the common laws on the right of women to vote and becoming a candidate for parliament or membership in the City and Village Councils. Although the number of female members of the Parliament is not the same as that in the European countries, women have had an active presence in all Iranian parliaments since 1979 Revolution. In the Article 109 which is on the Leadership Qualifications, and also in the qualifications of the members of the Assembly of Experts of the Islamic Republic of Iran who elect the Supreme Leader and monitor his activities, there is not any distinction between women and men. At least, it could be said that the Constitution does not include any Article on this subject.

This is also true on the election of the ministers and members of the Expediency Discernment Council (Nation's Exigency Council) (Article 112). Therefore, there is not any legal restriction on the membership of women in these institutions. Then, low participation rate of women may have structural and cultural or other kinds of reasons. But in the Article 115 on the qualifications of the president, it is underlined that: The President of the Islamic Republic of Iran must be elected from among the religious and political elite (*Rijal*) who meet the following qualifications: Iranian origin, Iranian nationality, administrative leadership, clear past record, honesty and piety, believing in the fundamentals of the Islamic Republic of Iran and the official religion of the country.

It is noteworthy that the condition "religious and political elite (*Rijal*)" is not used for the Supreme Religious Leader, representatives of the Assembly of Experts, jurists and lawyers of the Guardian Council, head of the Judiciary, members of Parliament, ministers and the deputies of the President.

Because these cases are obvious and indisputable, the condition of being male or female is not separated. Thus, this point indicates that in the Article 115, "elites (*Rijal*)" is not expressed in its literal meaning and has its own conventional meaning as "personality".

Mohammad Hashemi (Report, 2017), a university professor and one of the drafters of the Constitution, expresses his opinion on the term "political elite (*Rijal*)" and states: in accordance with the Article 115 of the Constitution, The President of the Islamic Republic of Iran must be elected from among the religious and political elites (*Rijal*). In this regard, we must first define the term elite (*Rajol*). Literally, elite stands for "man", and we have *Nisa* (women) opposite to *Rijal*. But in terms of literal and social definitions, political elites stand for a political personality. An eminent personality. Although some theorists believe that expressing the term "man" is not necessary, but in contrary, others believe that presidency is of very high importance, so the president must be a man.

This university professor maintains that the word *Rijal* stands for personality. So, there is a conceptual difference between *Rijal* and men. Therefore, in the Constitution, man is replaced with *Rijal*. Based on this interpretation, if we consider the word elite (*Rajol*) as a political personality, perhaps *Rajol* would be considered as a political personality through pass of time and

its acceptance in society, and in this case, women could be considered as political elites. On the other hand, women have been gradually taking charge of the political affairs in the recent years.

However, it is obvious that there is not a definite legal point of view on the competency or incompetency of women in taking charge of the presidency. This lawyer adds that: in the draft of the Iranian Constitution, no reference was visible on the gender condition of the candidates, but in the inspection group, the condition of being "man" was added, and it was arranged to be more discussed in the Assembly of Experts of the Constitution. The group that believed on the lack of necessity to indicate the condition of being "man", argued that the subject "Guardianship (Velayat)" is not considered here in fulfilling the condition of being "man", but the President of the Republic is responsible before the nation, and has his executive power through the vote of the people.

But others were against this article. They stressed that the presidency relates to government and guardianship and emphasized that women have no right to rule. However, efforts of the both sides of the Assembly of Experts of the Constitution had no result in approval of the current Article by the general condition of "Political elites": the condition that was considered out of the third vote taking for ratifying this draft, was considering the future that was forecasted by Ayatollah Beheshti (the then head of the parliament for compiling the Constitution) against those who indicated that women have no right to rule in Islam: "maybe someday a woman has the necessary qualification for presidency in the country, a good person for the nation, so we do not have to deprive ourselves of her good services through restricting the law."

Regarding the Guardian Council's call for analyzing and determining the standards to identify political elites on the part of the lawyers, Mohammad Hashemi (2017) an Iranian lawyer, believes that: in the Constitution, being a political elite, is one of the qualifications of the president. The word "Man" was used in the draft of the Constitution but did not poll and was not ratified. Later the word "Rajol" was used in the amendment and polled. It shows that the objective of the legislators in using the word Rajol, is separated from man.

By emphasizing that Rajol stands for personality and does not imply gender, this lawyer indicated that: In the Quran, accomplishment of equality and justice is related to the human without any concentration on gender, which shows that women can participate in different fields of activities.

It could be said that the general meaning of Rajol, includes both women and men, and the legislator approved this term based on the social situations of that period of time.

In response to the criticisms on the physical ability of women, this professor of Constitutional law expressed that: these criticisms are often excuses and do not include legal logic. We have a lot of women who are active in various fields. Most of these criticisms are based on Islamic issues, which are rooted in holy Islamic texts and are mostly considered by conservative people. There is no difference between women and men in terms of human capabilities.

There is no legal definition of the word Rajol, therefore, we should refer to its conventional definition. Although literally it has a gender based concept and implies being a man, but some words may take other meanings based on the situation and against its literal meaning, such as "chivalrous" which technically means a person with a spirit of devotion and forgiveness, but in its conventional meaning, it does not imply the gender of the person. It also holds true in the case of the word "Rajol."

According to Mohammad Taher Kanani (Report, 2017), an Iranian lawyer, Rajol implies personality, not being a male or female. In other words, Rajol is a state of virtue and ethical and political maturity and ability. Dr. Kanani also argues that according to Article 19 of the

Constitution, all people of Iran enjoy equal rights, and gender, religion and race do not bestow any privilege. In fact, the word political elite must be interpreted in the light of the Article 19 of the Constitution and the human equality.

Dr. Nemat Ahmadi (Report, 2017), an academic and Iranian lawyer, declares that from a legal view, the Constitution cannot be ambiguous and must be transparent. However, the Guardian Council is responsible for interpreting the Constitution if needed. If the male gender was meant by the Constitution, it had been mentioned clearly in the Articles. When Ayatollah Beheshti speaks on the "political elite" in the Assembly of Experts on Compiling the Constitution, gender issues are not discussed at all.

In this regard, the spokesman for the Guardian Council of Constitution declares that: "In politics, someone is not considered a politician just because of working in an executive organization or living in this society and somehow being linked to executive organizations. A politician is a person who has an effective role in strengthening the political foundations of the system and has an active participation in the national political affairs and this definition is beyond a simple administrative relationship. In this regard, Ayatollah Jannati, secretary of the Guardian Council expresses that: when someone registers to run for presidency, it should be considered whether: they have a deep understanding out of the internal and external political trends on the country in a sense that could be able to give suitable solutions for the national affairs.

In response to the question that "what are the qualifications of being a political elite and how a person can be considered as a political or religious elite?" Ayatollah Jannati expressed that: "Those who can afford solving major national political issues and have a logical and clear-cut analysis out of those issues, and executive authorities can hold consultation with them, can be considered as elites" (Report, 2017 B).

The point that none of these researchers mention, is the rule of *Taghlib* in the Arabic language. In the dual (binary) words, sometimes one of the meanings prevails over the other. For example, in interpretation of sun and moon to "Shamsein (two suns)," which implies moon and sun. This is also true for *Rijal*. So, in order to prevent using both words of men and women the word *Rijal* is used. Ibn Manzur defines the term "*Rajol* (a man) as: strong, full, scary and dreaded, hard and difficult, decisive and sharp. (1979, *Rajol* entry). Reflection in the meaning of "*Rajol*" reveals that it implies strength and perfection. The entry "*Anth*" (female) is defined as soft, slow and non-sharp. From the above we find that a man (male) in Arab culture is considered a strong and powerful creature. This dominance of man in the discourses threw the woman into the "the reality of man" trap, and this delusion of man's superiority established the mechanisms of society according to the man's demands. This is what Michel Foucault says, "The truth is confirmed by someone who is more frequently mentioned" (Barhoumeh, 2002:37, quoted by Foucault).

Arab grammarians consider masculine as primary and feminine as secondary. Wherever masculine and feminine co-occur, they prefer the former over the latter and say «الرَّجُلُ وَالْمَرْأَةُ جَلَسَا» (the man and the woman sat down and stood up) (Ibn al-Anbari, 1978: 182)¹. In fact, the preference of masculine over feminine is a dominant ideological form, and this ideological form in Arab culture seems so natural that it has been become a common concept accepted by everyone.

Besides, I should add that the Qur'an is in Arabic, and in Arabic, in contrast to other languages, including Farsi, there are masculine and feminine pronouns. Arabic uses feminine pronouns and words in cases related to women and uses masculine pronouns and words in cases related to men. However, the other two cases use masculine pronouns and words, one in the affairs shared by men and women, and the other in matters in which gender is not intrinsic in its nature, such as God and angels. Both use masculine pronouns and words. However, in some cases, in

Arabic according to the appearance of the word and speech, masculine or feminine forms are used, while the thing referred to in nature and gender is different from its form in speech. That is, the thing referred to may be masculine in nature while in speech the feminine form is used. Arabic grammar makes use of masculine pronouns and words in three cases while uses feminine words only in one case. With this explanation, it becomes clear that the Qur'an has not invented its own specific masculine and feminine rules; therefore, there is no need to look for answers regarding its reasons. The type of language used in the Qur'an is a conversational form and it complies with the rules, the literature and the grammar of Arabic. For this reason, some interpreters believe that things referred to in the Qur'an with the masculine form are not necessarily male but can include both male and female.

Furthermore, some interpreters conclude that the dominance of masculine forms in the Qur'an is due to "*Taghlib*." As it was mentioned earlier *Taghlib* is an Arabic rule which means preference or dominance like the preference of masculine over feminine or vice versa, the preference of sane over insane, the preference of major over minor etc.

The Qur'an uses masculine pronouns in most cases where it mentions Paradise blessings. Some contend that this is due to the preference of masculine over feminine. There is such rule in other languages as well. The word "Rejal" (men) in Iranian Constitution can be interpreted with reference to *Taghlib* rule to include women as well because we adhere to Arabic language when it comes to interpretation of such terms.

Currently, the Guardian Council has failed to express a clear stance on the presidential nomination of women, which is irrational and is the continuation of discrimination in political contribution. The council must refrain from failing to fulfil its responsibility which is the interpretation of the Constitution.

Conclusion

The sexual non-discrimination principle is usually general and brief in the Constitution of Arab Muslim countries. The examples referring to the above principle are not detailed. Therefore, there is room for limiting interpretations. Since these Constitutions were written a long time ago, in future amendments newer agreements and conventions must be consulted to remove vagueness and brevity and make them more specific.

The strengthening of the family institution is emphasized in the Constitution of most Muslim countries; however, there is not as much emphasis on civil liberties, the right to political participation, the right to equal employment, the right to health, and so on with respect to individual rights.

Iran has not joined the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979). The Convention called for the elimination of discrimination against women in political and social life. The balance of the presence of women and men in various public, political and social spheres are indicators of the full exercise of these rights and a sign of equality and the elimination of all forms of discrimination in this field (Recommendation No. 23 of CEDAW, 1997). Failure to join this Convention cannot be a pretext for not being obligated to observe and enforce its provisions. Because:

- A. The Sexual non-discrimination Principle has reached international custom and is therefore binding.

- B. Iran has also joined the International Covenant on Economic, Social and Cultural Rights (1966), also the International Covenant on Civil and Political Rights (1966), and there are also examples of women's rights in these covenants. Therefore, in the 1989 Constitutional amendment, more attention should have been paid to women's rights, and some issues such as political participation (especially the right to nominate for the presidency) should have been left out of ambiguity.
- C. Another point is the extension of the treaty- based obligations of governments. That is, the obligations of member states regarding the treaty they have joined go beyond their original commitments in the light of time, global developments and other international issues, and force them to comply with more or different obligations.

Although the Iranian Constitution reflects most of the ideas on the liberal Constitutional law, it adjusts more to the institutional Constitutional law.

For example, in the section of women's rights, the emphasis is on the family as a unit and not just on the woman as an autonomous human with different personal freedoms. This Constitution considers women in the framework of the family and acknowledges their rights and duties alongside her husband and children.

This approach arises from the governance of the principles beyond the Constitution, principles which are included in the religious contexts. The impact of the religious norms on the Constitution cannot be denied. This co-existence of conventional and Islamic resources and multiple norms, despite its functions and benefits, gradually creates conflicts in the implementation phase.

Despite these problems and conflicts, the constitutionalization of women's rights and gender equality in the Iranian Constitution is a significant achievement and accomplishment. However, the problem of differences between women and men in some laws still exist. For example: fundamental rights are macro and universal rights; they are binding on all nations. Besides, there are micro rights that are based on the nations' culture-specific qualifications. Thus, in addition to recognizing fundamental rights as universal rights, the issue of cultural diversity (in Muslim countries) cannot be ignored. As well, some Iranian lawyers use the term gender justice (in Persian: *edalate jensiyati*) instead of gender equality. This is also an implicit response to some differences regarding the women's rights in Iran. Other researchers argue that equality in rights differs from equality in personal status. People cannot be equal in their personal status, such as talent, abilities and possessions, but they should have equal public rights.

It should be added that equality depends on two theoretical principles: 1) existential commonality of women and men in being human, and 2) Equality of all people in benefiting from fundamental human rights. Some Iranian lawyers believe that this type of equality does not mean that women and men are the same in all social rights and responsibilities. Such a comprehensive similarity is not to women's advantage. As the equality of women and men in benefiting from rights and freedoms is expressed in the content of the Convention on Women's Rights, this type of equality is associated with the humanity of human beings and ignoring it would be contrary to human dignity.

Although the shared humanity of women and men is currently obvious, it has not always been accepted by many earlier thinkers and philosophers including Aristotle, as feminist philosophers have noted. However, as declared in the Holly Quran fifteen centuries ago: “women and men are created from a single soul” (Surah An-Nisa –verse 1). Likewise, there are several other verses that imply the substantial commonality of women and men.

The author of the paper does not advocate the theory of Islam's incompatibility theory with human rights, nor does he defend its comprehensive compatibility theory; instead, I argue that some restrictions against women can be removed through new perspectives and interpretations of Islam.

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